STATE OF MICHIGAN

COURT OF APPEALS

COMMAND OFFICERS ASSOCIATION OF STERLING HEIGHTS, Plaintiff-Appellee,	UNPUBLISHED December 17, 2013
v	No. 310977 Macomb Circuit Court
CITY OF STERLING HEIGHTS, Defendant-Appellant.	LC No. 2011-005041-CL

Before: BOONSTRA, P.J., and DONOFRIO and BECKERING, JJ.

PER CURIAM.

Defendant appeals by right from the trial court's order granting plaintiff's motion for summary disposition and denying defendant's motion for summary disposition. We vacate the trial court's order and remand for entry of an order granting summary disposition in defendant's favor.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

This case arises under the parties' collective bargaining agreement in effect from July 1, 2007 to June 30, 2012 ("CBA"). The CBA provides for arbitration of disputes. In February 2011, defendant notified plaintiff that, effective July 1, 2011, certain members of the plaintiff association may be placed on a reduced work schedule of 32.5 hours per week (from 40 hours per week). Defendant cited current economic conditions and the "inability to achieve wage and benefit concessions voluntarily." Plaintiff filed a grievance, claiming that the potential unilateral reduction in hours constituted a breach of the CBA. Defendant thereafter advised plaintiff of its decision to reduce the weekly work schedule of plaintiff's members to 37.5 hours. The matter proceeded to arbitration.

Plaintiff argued before the arbitrator that defendant's decision to reduce work hours from 40 hours per week to 37.5 hours per week without plaintiff's agreement amounted to a violation of the CBA. The arbitrator disagreed and decided in defendant's favor. Plaintiff filed this action in circuit court seeking an order vacating the arbitrator's award, and the parties filed cross-motions for summary disposition. The trial court granted plaintiff's motion and denied defendant's motion. On appeal, defendant argues that the trial court erred in concluding that the arbitrator exceeded his authority under the CBA. We agree.

II. STANDARD OF REVIEW

Because the trial court considered facts outside the pleadings in deciding the parties' cross-motions for summary disposition, the court's decision is treated as having been based on MCR 2.116(C)(10). *Mitchell Corp of Owosso v Dep't of Consumer & Industry Services*, 263 Mich App 270, 276; 687 NW2d 875 (2004). We review a trial court's decision on a motion for summary disposition de novo. *Id*. at 274-275. The question whether an arbitrator has exceeded his authority is also reviewed de novo on appeal. *Miller v Miller*, 474 Mich 27, 30; 707 NW2d 341 (2005). An arbitrator exceeds his powers when he acts beyond the material terms of the contract from which he draws his authority. *Id*.

Judicial review of an arbitration award is narrowly circumscribed. *Sheriff of Lenawee Co v Police Officers Labor Council*, 239 Mich App 111, 117; 607 NW2d 742 (1999). As this Court has explained:

> The necessary inquiry for this Court's determination is whether the award was beyond the contractual authority of the arbitrator. Labor arbitration is a product of contract and an arbitrator's authority to resolve a dispute arising out of the appropriate interpretation of a collective bargaining agreement is derived exclusively from the contractual agreement of the parties. It is well settled that judicial review of an arbitrator's decision is limited. A court may not review an arbitrator's factual findings or decision on the merits. Rather, a court may only decide whether the arbitrator's award "draws its essence" from the contract. If the arbitrator in granting the award did not disregard the terms of his employment and the scope of his authority as expressly circumscribed in the contract, judicial review effectively ceases. [*Id*. at 118, quoting *Lincoln Park v Lincoln Park Police Officers Ass'n*, 176 Mich App 1, 4; 438 NW2d 875 (1989) (internal citations omitted).]

III. THE ARBITRATION

In this case, the arbitrator derived his authority from Article 9 of the CBA. Article 9 sets forth the grievance procedure, including the authority of the arbitrator. It provides that the arbitrator is empowered to make a decision in cases of alleged violations of the terms of the agreement, and that the decision of the arbitrator shall be final and binding. It further provides that the arbitrator's authority is only limited as is specifically set forth in the CBA, and that the arbitrator's final and binding decision may be challenged "if not made in accordance with the arbitrator's jurisdiction and authority" under the CBA. Among other enumerated limitations (which are not at issue here), the arbitrator "shall have no power to add to, or subtract from, alter or modify any of the terms of this Agreement," and "shall have no power to substitute his/her discretion for the City's discretion in cases where the City is expressly given discretion by this Agreement."

Here, the arbitrator considered plaintiff's argument that defendant's decision to reduce work hours from 40 hours per week to 37.5 hours per week without plaintiff's agreement amounted to a violation of the CBA. The relevant provisions of the CBA are as follows:

ARTICLE 1

Recognition - Unit – Security

* * *

1.6 A. Wages, benefits, and working conditions of employment in effect at the execution of this agreement shall be maintained during the term of this Agreement.

B. The City will make no unilateral changes in wages, benefits and working conditions during the term of the Agreement.

* * *

ARTICLE 11

Management Rights

11.1 [A]ll rights which ordinarily vest in and are exercised by employers except such as are specifically relinquished herein are reserved to and remain vested in the City, including but without limiting the generality of foregoing the right:

* * *

F. To hire, assign and lay off employees to reduce the work week or the work day or effect reductions in hours worked by combining layoffs and reductions in work week or work day.

* * *

J. To determine lunch, rest periods and cleanup times, the starting and quitting times and the number of hours to be worked.

K. To establish work schedules.

* * *

11.2 This article shall not give authority to the City to vary terms of this agreement without mutual agreement of the parties hereto.

* * *

ARTICLE 13

General

* * *

13.9 It is agreed between the City and the Association that the City has the option to utilize ten-hour shifts. When the employees are assigned to work a ten-hour shift, four-day work week, each employee shall receive overtime pay based upon time and one-half for all work in excess of 40 hours per week or work in excess of ten hours per day.

* * *

ARTICLE 16

Hours of Work, Overtime, Shift Time, Shift
Preparation, Court Time, Compensatory Time

> 16.1 Hours of Work. Shift Preparation. The normal work week schedule shall consist of a four (4) day – ten (10) hour work week. Any changes to the four (4) day – ten (10) hour schedule shall be at the mutual agreement of the parties. All Command Officers shall report to work thirty (30) minutes in advance of the start of his/her shift, in order to be prepared to assign personnel not later than 15 minutes prior to the start of the shift. This thirty (30) minutes shall be earned as compensatory time at time and one-half.

The crux of the parties' dispute about the meaning of the CBA is between the powers reserved to defendant under Section 11.1 and the requirement of mutual agreement under Section 16.1. The arbitrator observed that Section 13.9 ("the City has the option to utilize ten-hour shifts") is found in the 1997-2002 CBA, and that there was a five-day, eight-hour work schedule in place when this provision was negotiated. He noted that the requirement in Section 16.1, that "any changes to the four (4) day – ten (10) hour schedule shall be at the mutual agreement of the parties," was negotiated in the 2002-2007 CBA. Considering these provisions together, along with the parties' bargaining history, the arbitrator concluded that the meaning of Section 16.1 is that "the City may not revert to the 5 day 8 hour schedule without mutual agreement." Defendant had the right, however, by virtue of Section 11.1, to reduce *hours* within the confines of the "normal schedule." The arbitrator therefore denied plaintiff's grievance.

III. THE CIRCUIT COURT PROCEEDINGS

Following the arbitration, plaintiff filed suit in circuit court, contending that the arbitrator had exceeded his authority under the CBA. On cross-motions for summary disposition, the circuit court held that the arbitrator had exceeded his authority by "ignoring the expressed terms" of Section 16.1 of the CBA. Therefore, the circuit court concluded that the arbitrator's decision "did not draw its essence" from the CBA, and that the arbitrator had exceeded his authority. The trial court granted summary disposition to plaintiff, and vacated the arbitration award.

IV. ANALYSIS

Defendant argues on appeal that the arbitrator acted within his authority in interpreting the language of the CBA, and that the trial court erred in vacating the arbitration award. Plaintiff responds that the language of Section 16.1 is clear and unambiguous, and that the arbitrator erred in concluding otherwise. Plaintiff also argues that the arbitrator ignored Section 11.2 ("This article shall not give authority to the City to vary terms of this agreement without mutual agreement of the parties hereto.").

However, plaintiff's argument largely ignores Section 11.1. So too does the circuit court's ruling. It was far from implausible for the arbitrator to conclude that notwithstanding that Section 16.1 established a "normal work week schedule," Section 11.1 specifically retained

defendant's right to adjust the number of hours worked and to reduce work weeks or work days. Arguably, in fact, it is the arbitrator's interpretation of the CBA that gives effect to all of the provisions of the CBA, without varying any of them. While the circuit court may disagree with the arbitrator's interpretation of the CBA, and of the interplay between Section 11.1 and Section 16.1, the CBA vests in the arbitrator the authority to render that interpretation. That the circuit court may disagree with the arbitrator's interpretation is not grounds for vacating the arbitrator's decision.

Plaintiff further argues that the arbitrator improperly relied on extrinsic evidence. Specifically, the arbitrator considered the parties' prior agreements, in order to give context to the provisions of the existing CBA. Moreover, the arbitrator noted that it was appropriate to consider defendant's decision to reduce work hours in the context of defendant's financial situation. The arbitrator stated that "[n]o evidence has been presented to suggest that the City['s] representation of a dire financial situation is a ruse," and that plaintiff bargaining unit had not been singled out for more severe cuts. The arbitrator concluded that this case did not involve bad faith or unreasonable action on the part of defendant, and that this tilted the balance in favor of defendant given the arguably conflicting provisions of the CBA. The trial court took the position that these considerations were improper and outside the scope of the CBA.

We note initially that even if plaintiff could establish that the arbitrator erred in considering extrinsic evidence, that is not the proper question. Judicial review is limited to determining whether the arbitrator acted within his authority under the CBA. The arbitrator's decision was well within his authority to decide disputes arising from the CBA and his decision "draws its essence" from the CBA. *Sheriff of Lenawee Co*, 239 Mich App at 119.

Moreover, as our Supreme Court has explained:

> [O]rdinarily, unless otherwise expressly agreed, an arbitrator has great latitude in the sources he may rely upon in resolving disputes concerning the appropriate interpretation of specific contractual provisions, including aspirations expressed in a preamble, the past practices of the parties, and, in some circumstances, the reasonableness of policy decisions within the management rights reserved to an employer." [*Port Huron Area School Dist v Port Huron Ed Ass'n*, 426 Mich 143, 160; 393 NW2d 811 (1986).]

In this case, the arbitrator had "no power to add to, or subtract from, alter or modify any of the terms" of the CBA, but there was no express limitation on the sources he was permitted to consider in determining the meaning of its provisions. In any event, the arbitrator's consideration of this secondary issue does not lead to the conclusion that he exceeded his authority under the CBA in rendering a decision in defendant's favor.

We vacate the trial court's order and remand for entry of an order granting summary disposition in defendant's favor. We do not retain jurisdiction.

/s/ Mark T. Boonstra
/s/ Pat M. Donofrio
/s/ Jane M. Beckering